

U.S. DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

DONALD C. TOMLINSON,
S83 W23905 Artesian Avenue
Big Bend, WI 53103

Plaintiff,

Case No:

and

UNITED STATES OF AMERICA, DEPARTMENT OF
HEALTH AND HUMAN SERVICES by its Secretary of the
United States XAVIER BECERRA
c/o United States Attorney
Eastern District of Wisconsin
517 East Wisconsin Avenue
Milwaukee, WI 53202

and

BLUE CROSS BLUE SHIELD OF WISCONSIN
N17 W24340 Riverwood Drive
Waukesha, WI 53188
Registered Agent:
CT Corporation System
301 South Bedford Street, Suite 1
Madison, WI 53703

and

WEST BEND MUTUAL INSURANCE COMPANY
1900 South 18th Avenue
West Bend, WI 53095
Registered Agent:
Christopher Zwygart
West Bend Mutual Insurance Company
1900 South 18th Avenue
West Bend, WI 53095

Involuntary Plaintiffs,

v.

UNITED STATES POSTAL SERVICE, Louis DeJoy, as
Postmaster General of the United States Postal Service
c/o United States Attorney
Eastern District of Wisconsin
517 East Wisconsin Avenue
Milwaukee, WI 53202

and

MICHAEL N. ANDERSON
N9209 Wooded Court
Whitewater, WI 53190,

Defendants.

COMPLAINT

NOW COMES the plaintiff by his attorneys, Warshafsky, Rotter, Tarnoff & Bloch, S.C.,
and as and for a claim against the defendant, alleges as follows:

CONDITIONS PRECEDENT

1. On October 8, 2020 a formal notice of this claim for injury and damages was
presented to the United States Postal Service, via Certified Mail. To date, no response to the claim
has been received.

2. All conditions precedent to this action, within the meaning of Rule 9(c), Fed. R. Civ.
Pro., have been performed or have otherwise occurred.

JURISDICTION, ALLEGATIONS, AND VENUE

3. This case arises out of alleged the negligence committed by an employee of the
United States Postal Service, and, therefore, this Court has subject matter jurisdiction over the
action pursuant to 28 U.S.C. § 1346(b) and the appropriate provisions of the Federal Tort Claims
Act.

4. The Eastern District of Wisconsin is the proper venue for this action because the Plaintiff's claim arose in the Town of Vernon, Waukesha County, Wisconsin, which is within the geographical boundaries of the Eastern District of Wisconsin within the meaning of 28 U.S.C. § 1391(b).

PARTIES

5. Plaintiff is a resident of Waukesha County, Wisconsin.

6. The United States Postal Service and its Transportation Security is an appropriate defendant under the Federal Tort Claims Act as all claims in this matter arise out of its employment of Michael N. Anderson.

7. Defendant Michael N. Anderson is a resident of Walworth County, Wisconsin and is sued in his individual capacity.

8. At all times material herein, Defendant Michael N. Anderson was employed by the United States Postal Service.

9. Involuntary plaintiff, The United States of States of America, Department of Health and Human Services, may have paid health care benefits and/or on behalf of plaintiff, Donald Tomlinson, for medical care and services rendered as a result of the incident which is the subject of this case. As a result, said involuntary plaintiff may be subrogated under federal law.

10. Involuntary plaintiff, Blue Cross Blue Shield, may have paid health care benefits and/or on behalf of plaintiff, Donald Tomlinson, for medical care and services rendered as a result of the incident which is the subject of this case. As a result, said involuntary plaintiff may be subrogated under federal law.

11. Involuntary plaintiff, West Bend Mutual Insurance Company, may have paid health care benefits and/or on behalf of plaintiff, Donald Tomlinson, for medical care and services

rendered as a result of the incident which is the subject of this case. As a result, said involuntary plaintiff may be subrogated under federal law.

FACTUAL ALLEGATIONS AND CLAIMS

12. On September 8, 2019, plaintiff was operating his vehicle at westbound on Maple Avenue in the Town of Vernon, Waukesha County, when plaintiff's vehicle was struck by an automobile owned by the United States Postal Service and operated by Michael N. Anderson.

13. The defendant, Michael N. Anderson, was in the scope of his employment for the United States Postal Service at the time of the collision.

14. The defendant, Michael N. Anderson negligently operated his automobile, thereby causing the collision referred to above.

15. The defendant, the United States Postal Service, as the employer of Michael N. Anderson at and prior to the time of the collision is liable to the plaintiff for all damage resulting from said collision, and is a proper party defendant to this action.

16. As a proximate result of the negligence of defendant Michael N. Anderson, plaintiff, Donald C. Tomlinson, sustained property damage to his vehicle and sustained personal injuries, some of which may be permanent in nature and which have caused him to sustain pain, suffering, disability, loss of earning capacity and hospital and medical expenses which may continue in the future.

17. The aforesaid injuries were caused by the negligence and carelessness of the agents, employees and representatives of the United States Postal Service.

DEMAND FOR JURY TRIAL

18. The Plaintiff hereby demands a trial by jury of all issues triable of right to a jury.

PRAYER FOR RELIEF

WHEREFORE, the plaintiff Donald C. Tomlinson, demands judgment against the defendants for compensatory damages in whatever amount the trier of fact deems to be reasonable, together with the costs, disbursements, and attorneys' fees in this action.

Dated: September 7, 2021

WARSHAFSKY, ROTTER, TARNOFF & BLOCH, S.C.
Attorneys for Plaintiff

Electronically signed by Ryan A. Ogren

By: _____

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